

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

January 30, 2009

A regular meeting of the Commission for Human Rights was held in the agency conference room on Friday, January 30, 2009. Present at the meeting were Dr. John B. Susa, Camille Vella-Wilkinson, Nancy Kolman Ventrone and Iraida Williams. Absent were Commissioner Alberto Aponte Cardona and Alton W. Wiley, Jr. Commissioner Wiley was out of state. Dr. Susa called the meeting to order at 9:15 a.m. Commissioner Lee arrived at 9:30 a.m.

A motion was made by Commissioner Williams to approve the minutes of October 31, 2008. The motion to approve was seconded by Commissioner Vella-Wilkinson and carried.

Commissioner Williams moved to approve the minutes of December 5, 2008. The motion to approve was seconded by Commissioner Vella-Wilkinson and carried.

Commissioner Vella-Wilkinson moved to approve and keep the executive session minutes of December 5, 2008 memo closed pursuant to Rhode Island General Laws Sections 42-46-4 and because the minutes relate to a matter allowed to be held in Executive Session under Rhode Island General Laws Section 42-46-5(a)(1) and the Commission finds it appropriate to maintain them as closed

minutes. The motion was seconded by Commissioner Ventrone and carried unanimously.

Status Report: Michael D. Évora, Executive Director

A written report was handed out. All new information is in bold print.

Personnel: At 10:25 a.m., Commissioners Vella-Wilkinson moved that the Commission go into executive session under R.I.G.L. Section 42-46-5(a)(1) which provides that a public body may hold a meeting closed to the public for the following purpose:

Commissioner Meeting -2- January 30, 2009

(1) Any discussions of the job performance, character, or physical or mental health of a person or persons provided that such person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.

It was noted for the record that the person to be discussed had been so notified and does not require that the discussion be held at an open meeting.

At 10:35 a.m., Commissioner Lee moved to return to open session. Commissioner Williams seconded the motion and the motion carried

Case Production Report – Attached

Aged Case Report - Attached

Outreach Report - Attached.

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: Cynthia Hiatt reported that Commissioner Ventrone has been nominated to be reappointed to the Commission by the Governor and we are waiting for approval by the Senate.

OUTREACH: Commissioner Vella-Wilkinson reported that a presentation on domestic violence will be held at AS220 on February 16, 2009 at 5:30 pm. Commissioner Kolman Ventrone reported that she monitored police exams in Jamestown.

Commissioner Meeting -3- January 30, 2009

STATUS REPORT - LEGAL COUNSEL by Cynthia M. Hiatt and Francis Gaschen

LITIGATION: Report attached.

LEGISLATION: Legal Counsel discussed the Federal Lily Ledbetter Fair Pay Act and pending state legislation

REGULATIONS: No discussion at this time.

HEARING SCHEDULE: Discussed

DECISIONS: No discussion at this time.

The meeting adjourned at 11.00 a.m. The next regular meet-ing of the Commission is scheduled for Friday, February 27, 2009 at 9:00 am.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

**Notes taken by: B. Ross
EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
JANUARY 30, 2009**

I. BUDGET

S = State/General Revenue; F = Federal (EEOC/HUD); T = Total

	FY 2009	FY 2009	FY 2009	FY 2010
	(Gov. Rec.)	(Enacted)	(Final)	(Request)
S	991,659	991,659	932,418	868,444
F	391,309	391,309	472,455	406,615

T 1,382,968	1,382,968	1,404,873	1,275.059
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On September 23, the Commission's Revised FY 2009 and FY 2010 Budget Requests were submitted to the Governor. A shortfall of \$82,643 in federal revenue is anticipated for FY 2009; consultation with our Budget Analyst reveals that this anticipated shortfall is likely due to the "scooping" of excess federal revenue at the end of FY 2008 to cover general revenue shortfalls. The Commission has requested a general revenue supplemental appropriation in this amount for FY 09.

The FY 2010 Request complies with the Governor's directive that general revenue funds be decreased by eight percent (8%), to a target amount of \$868,444. This amount is reached using the Budget Office's calculated current service cost for FY 2010 of \$943,961; in reality, to achieve the target amount, the agency must reduce its true current service cost for FY 2010 of \$1,008,196 by nearly 14%). In order to meet this target, the Commission would have to lay off two investigative staff members, or an equivalent thereof. We await word as to whether the Budget Office will recommend, and whether the Governor will adopt, the general revenue reduction for FY 2010.

II. FEDERAL CONTRACTS

EEOC – For federal FY 2009 (ending 9/30/09), according to EEOC Project Director Marlene Toribio, we have closed 57 co-filed cases.

Our 2009 EEOC contract amount is not yet known.

HUD – For FY 09, according to HUD Project Director Angela Lovegrove, we have taken in 32 new housing charges, 27 of which are co-filed with HUD. Within this same time period, we have processed 41 housing charges, 37 of which were co-filed with HUD.

III. PERSONNEL

Executive Session

IV. OUTREACH – Refer to attached report

V. GENERAL STATUS

●Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.

●Case Closures – Refer to attached report.

●Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload.

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 08 with

approx. 370 cases in inventory. As of 1/22/09, we had a total of 346 cases in inventory; 10 of those cases were pending assignment.

•Annual Report – The FY 2008 Annual Report is finalized and will be sent to the printer once Dr. Susa has reviewed it and signed the letter transmitting it to the Governor.

•EEOC Visit – On Wednesday, February 18, two representatives of the EEOC NY Regional Office will conduct an on-site review at the Commission.

•Arbitration – On April 30, an arbitration hearing was held on the union grievance in respect to the nonpayment of union dues by Susan Pracht and Jason Flanders during the period in which they served as Interns (before they were employed by the Commission). The Arbitrator issued his decision on October 15. He found in favor of the Union, concluding that Susan and Jason ceased to be “interns” after they ceased to be college students, and that their status at the Commission prior to their hire as employees was more akin to temporary employees. As a result of the decision, “[t]he State will pay the Union “... either union dues or an agency service fee ...” whichever is less, for both individuals for said periods [post student-internship and pre-employment].” The appeal period has expired.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: January 30, 2009

Recent developments are in bold.

Aquidneck Island v. RICHR, et al.

This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale not Aquidneck. Case is moot now.

Atturio et al v. Évora

This is an appeal of a Commission decision that granted in part and denied in part a motion to quash a Commission subpoena. Oral argument was scheduled for January 16, 2009; it has been continued to February 19.

Babbitt v. Crescent Park Manor, et al.

The Commission intervened as a party plaintiff in this case. Discovery is ongoing. A discovery deposition was held.

Bagnall v. RICHR and WLWC et al.

The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. On April 22, 2008, the complainant's attorney filed his brief. The Commission's Brief was filed on August 27, 2008. The Commission received the respondent's brief on December 5, 2008. The parties plan to move to have the appeal assigned to a judge for decision.

Crawford v. Metropolitan Government of Nashville and Davidson (U.S. Supreme Court January 26, 2009)

The plaintiff had not come forward on her own to report the sexual harassment of a supervisor, but when she was asked during an employer investigation, she detailed various acts of sexual harassment by the supervisor. She was terminated soon after the internal employer investigation was completed. She filed a charge of retaliation, alleging that she was terminated because she opposed unlawful employment practices. The lower courts said that she could not claim retaliation because her simple answers to employer questions were not "active, consistent" opposing activities. The Supreme Court overturned the lower courts and said that by informing the employer of sexual harassment, she was opposing discrimination and was protected from retaliation. This is a good case that will protect employees who report on discrimination when

their employers ask about it.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. In November, 2007, Judge Savage remanded the Commission Decision for the Commission to determine how the Commission would evaluate the evidence, given the conclusions reached in her decision. Judge Savage also asked the Commission to re-assess its Order. Justice Savage suggested that the parties consider whether Mrs. Gaffney should re-apply for subdivision of her property, following the proper procedure. Counsel wrote to the attorneys for the parties, given them several alternative steps and asked them how they would like to proceed. The respondent's attorney said that it would like Mrs. Gaffney to re-apply for subdivision under certain conditions. The complainant's attorneys, for various reasons, did not respond to the Commission for some time. On May 27, 2008, the Commission received a copy of a letter from the complainant's attorney to the respondents' attorney. The letter was a settlement proposal from Mrs. Gaffney. Settlement was not effected. Mrs. Gaffney's attorney indicated that she might withdraw as counsel. On September 2, 2008, Commission Counsel asked her for a formal decision on whether she will withdraw and she said that she would notify the Commission within two weeks. The Commission did not receive word from the complainant's counsel. On October 24, 2008, Commission Counsel notified the parties that on January 5, 2009, the Commission would commence reconsideration of the decision in light of Justice

Savage's decision. The letter provided that the parties' counsel could submit memoranda on reconsideration on or before January 5, 2009. On October 27, 2008, the complainant's son informed the Commission of his mother's medical condition. On October 27, 2008, Commission Counsel confirmed that complainant's attorney was still representing the complainant, however on October 30, 2008, counsel's office indicated that they might file a motion to withdraw and a motion for extension of time. They did not do so. As requested, respondent's counsel sent in the relevant ordinances and regulations in effect at the time in question and in effect at the present time. New counsel entered for the complainant on January 2, 2009. On January 5, 2009, Commission counsel sent a letter – if the complainant wants to submit additional ordinances or regulations or if either party wants to submit a brief, they must notify RICHR by January 12, 2009. Neither party requested an opportunity to submit additional materials or a brief by January 12. On Monday, January 26, 2008, the complainant's attorney requested a sixty day extension to submit a brief on Mrs. Gaffney's position.

J.J. Gregory and Sons v. RI Commission for Human Rights and Brenda Zeigler

The Commission found that J.J. Gregory and Sons discriminated against Brenda Zeigler because of her sex. J.J. Gregory and Sons filed an administrative appeal. Its appeal was amended to include an appeal of the Commission's Decision on Damages and Attorney's

Fees. The Commission filed the administrative record with the Court on February 14, 2008. Respondent filed its brief on January 5, 2009. The brief of the Commission and the complainant is due on February 20, 2009.

Kennedy v. State of Rhode Island/Department of Administration

The Commission's file was subpoenaed by the respondent. The Commission filed an objection to production of some of the documents, claiming a privilege, and brought the other records to the Attorney General's Office for copying.

King v. City of Providence Police Dept.

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court. Ms. Hiatt had been subpoenaed to testify at the trial and the trial date was rescheduled many times. Counsel has been informed that it appears that the trial will not take place.

Laboy v. Stat Health Services

Counsel is trying to locate respondent's officers in order to ensure

compliance with the Commission Decision and Order.

MHRH v. Rhode Island Commission for Human Rights and the Estate of Dr. John Satti

MHRH has appealed the Commission decision that MHRH retaliated against Dr. Satti and discriminated against him on the basis of his age. MHRH filed its Brief on August 7, 2008. On October 21, 2008, the Commission filed the administrative record. On January 14, 2009, the Commission filed its brief. The complainant's brief is pending.

RICHR (E. and L. Breault) v. Elmhurst House, Phoenix Property Management et al.

In this Fair Housing Practices Act case, the respondents elected to have the case heard in Superior Court. Suit on behalf of the Breaults was filed against four respondents in Providence Superior Court on January 27, 2009.

RICHR (Figueroa) v. Valley Affordable Housing

Respondents elected and did not return call to discuss settlement. Suit on behalf of the Figueroas was filed against two respondents in Providence County Superior Court. Service has been effectuated on one respondent. The owner of the housing unit was voluntarily dismissed from the suit. Settlement offer was not accepted. Discovery has started.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act was filed against Norman Cardinale, Mary Cardinale, Newport Developments LLC, AEGIS Lending and MERS. Suit against Aegis and Mers was voluntarily dismissed. Default was entered against all remaining defendants but later removed by Court. Motions to default have been granted. Motions for Entry of Default were granted on January 21, 2009.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against defendants. Discovery commenced. Motions to compel will be filed.

RICHR (Lovegrove) v. Escolastico

RI judgment was obtained and sent to FL lawyer for collection. Mortgage on property Escolastico owns in FL was foreclosed. Waiting for Lovegrove to forward funds to FL counsel to begin Supplementary Proceedings against Escolastico.

RICHR (Morin) v. Teofilo Silva, et al.

A complaint for enforcement was filed on 3-24-05. Service of the complaint will be made once respondent can be located.

RICHR (Robinson) v. Geruso, Flagship Management, et al.

A complaint against six defendants has been filed in Superior Court

alleging racial discrimination in a failure to rent case that went probable cause. The complainant elected. The respondents answered the complaint. Their attorney never responded to an offer to discuss settlement so discovery will proceed. By agreement of counsel, one party was voluntarily dismissed as a defendant and the management company was allowed to remain as defendant.

RICHR (Switzer) v. Principe, et al.

The respondents elected in this housing case that went probable cause on the basis of familial discrimination. The file has been copied and given to the AG to review. It was decided that the Commission would bring the suit. Suit was filed in state court on January 27, 2009.

RICHR (Zeigler) v. Laura Sitrin, Finance Dir. of Newport

Case resolved. Commission must annually monitor City training. Notice sent to the city regarding the annual training. Training completed for 2007.

Tucker v. Blue Cross

The complainant filed an administrative appeal of the Commission's finding of no probable cause. The administrative record was filed in Court. Nothing has been done since appeal filed in 2004.